

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA WILDLIFE DAMAGE MITIGATION ACT;  
PROVIDING FOR THE MITIGATION OF CONCENTRATIONS OF BIG GAME ANIMALS ON PUBLIC AND  
PRIVATE LANDS BY THE FISH, WILDLIFE, AND PARKS COMMISSION; PROVIDING A PROCESS FOR  
COMPLAINTS, INVESTIGATION, REVIEW, AND NOTICE CONCERNING BIG GAME ANIMAL  
CONCENTRATIONS; REQUIRING THE COMMISSION TO ADOPT RULES AND CREATING AN ADVISORY  
COUNCIL TO ADVISE THE COMMISSION CONCERNING RULES; CREATING REGIONAL COMMITTEES TO  
REVIEW CONCENTRATION COMPLAINTS AND INVESTIGATIVE FINDINGS; AND AMENDING SECTION  
87-1-225, MCA."

WHEREAS, concentrations of big game animals may cause damage to private and public lands; and  
WHEREAS, management of big game populations requires the cooperation of all landowners, both public  
and private, as well as hunters and the department of fish, wildlife, and parks; and

WHEREAS, the primary method of managing big game populations is by harvesting through public  
hunting; and

WHEREAS, existing laws are not adequate to address problems associated with the concentration of  
big game animals, given the nature of wildlife populations, their movement across the landscape, and the choices  
made by some landowners in managing their property; and

WHEREAS, wildlife resources are valuable to the citizens of Montana without regard to political  
boundaries; and

WHEREAS, it is the intent of the Montana Wildlife Damage Mitigation Act to keep big game animal  
populations in balance with the available habitat and to minimize, alleviate, and resolve game damage problems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Wildlife  
Damage Mitigation Act".

1        NEW SECTION. **Section 2. Prohibition on creating or maintaining conditions leading to**  
2 **concentration of big game animals -- definition.** (1) As used in [sections 1 through 8], "concentration" means  
3 the occurrence of big game animals within the boundary of a property under the ownership of one person or entity  
4 in numbers that pose:

5            (a) a potential threat to the health of the animals;  
6            (b) a detriment to the habitat or land on which the animals or a landowner relies; or  
7            (c) an imbalance in the total number of animals or the age or sex characteristics of the animal population  
8 in the hunting district.

9            (2) An owner of real property may not create or maintain a concentration of big game animals that results  
10 in or may result in:

11            (a) damage to adjoining property, whether public or private;  
12            (b) the inability of the department to manage big game animals within department population objectives  
13 approved by the commission or to maintain the health of big game animals; or  
14            (c) the transmission of disease.

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16        NEW SECTION. **Section 3. Complaint and request for review of existence of concentration of big**  
17 **game animals.** (1) A person who owns land that is subject to damage by big game animals within any hunting  
18 district established by the commission may file a written complaint with the department alleging a concentration  
19 and request an investigation of the alleged concentration of big game animals within the hunting district. The  
20 landowner shall submit a written complaint, signed by the landowner or the landowner's attorney, and a request  
21 for investigation of a concentration prior to filing a complaint in any district court or other court in Montana. The  
22 complaint must set out one or more of the elements creating a concentration and state how the alleged  
23 concentration affects the landowner's property.

24            (2) Upon receipt of the complaint and request for investigation, the department shall review the request,  
25 perform the necessary field work, and gather scientific and other relevant evidence pertaining to the complaint.

26            (3) After the department's review and investigation are completed, the written complaint and the results  
27 of the investigation must be forwarded to the appropriate regional committee established in [section 7(3)] for  
28 further consideration.

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30        NEW SECTION. **Section 4. Mitigation of circumstances causing concentrations -- reduction of**

1 **concentration of big game animals.** If the commission determines that a landowner is creating or maintaining  
2 a condition that results in the concentration of big game animals, the commission may reduce the concentration  
3 of big game animals. Reduction methods may include but are not limited to:

- 4 (1) requiring the landowner to disperse the big game animals according to a department-approved plan;
- 5 (2) authorizing department programs to reduce the concentration of big game animals, with the affected  
6 landowner's permission, through a dispersal plan conducted by the department or through public hunting;
- 7 (3) adjusting the length and scheduling of hunting seasons;
- 8 (4) increasing the number of licenses issued for the hunting of big game animals within the hunting  
9 district; and
- 10 (5) modifying or restricting the type and number of licenses issued for the hunting of big game animals  
11 within the hunting district.

12  
13 NEW SECTION. **Section 5. Remedies for creating or maintaining conditions resulting in**  
14 **concentration of big game animals.** A landowner who fails to comply with the mitigation proposals directed by  
15 the commission as provided in [section 4], except mitigation proposals requiring hunts on private property  
16 pursuant to [section 4(2)], may be subject to the imposition of any or all of the following:

- 17 (1) loss of landowner preferences for hunting licenses;
- 18 (2) loss of nonresident set-aside license use on the property;
- 19 (3) restricting or prohibiting the harvest of antlered animals in locations of concentration; and
- 20 (4) liability for creating or maintaining a public or private nuisance pursuant to Title 27, chapter 30.

21  
22 NEW SECTION. **Section 6. Rules for determining if landowner is creating or maintaining**  
23 **conditions resulting in concentration of big game animals.** The commission shall adopt rules that specify the  
24 procedures and criteria to be followed in determining whether a landowner is creating or maintaining conditions  
25 that result in the concentration of big game animals in violation of [section 2(2)]. In adopting rules, the commission  
26 shall include provisions that:

- 27 (1) require consideration of all relevant scientific information regarding the big game animals in an  
28 affected hunting district and the nature and condition of the habitat in the hunting district;
- 29 (2) require review of the record of harvest of big game animals in the hunting district, the issuance of big  
30 game hunting licenses, and the big game hunting success rate;

(3) require consideration of land ownership in the hunting district and land use practices;

(4) ensure an opportunity for the landowner who is alleged to be creating or maintaining concentrations of big game animals to have written notice of a complaint, to present evidence, and to respond to a complaint within 90 days;

(5) ensure an opportunity for other landowners in the hunting district to have written notice and to provide evidence, information, and documentation regarding the effects of big game concentrations on their property; and

(6) consider any report and recommendations of the advisory council established under [section 7(1)].

**NEW SECTION. Section 7. Advisory council and regional review committees.** (1) The director shall establish an advisory council, as provided in 2-15-122, to advise the commission regarding statewide rules and procedures to be used to determine the existence of a concentration of big game animals and the procedures for reviewing written complaints that a landowner is creating or maintaining a concentration of big game animals.

(2) (a) The advisory council must include at least five but not more than seven members, including but not limited to:

(i) a private landowner who either owns or controls by lease at least 3,000 acres;

(ii) a resident who has purchased a conservation license for a period of 5 consecutive years;

(iii) a representative of a federal land management agency with experience in wildlife biology;

(iv) a big game wildlife biologist employed by the department; and

(v) a member of the commission.

(b) The director shall provide support, including staff, that is appropriate for the advisory council to carry out its duties, including compensation and per diem as provided in 2-15-122(5).

(3) (a) The regional supervisor of each fish, wildlife, and parks administrative region shall appoint a committee within each administrative region composed of five members to review any written complaint that is brought within the corresponding administrative region alleging a concentration of big game animals. Each regional committee must include:

(i) a resident private landowner from the hunting district in which the alleged concentration is occurring, who may not be the person filing the complaint or the landowner against whom the allegations are made;

(ii) the commission member who represents the district in which the complaint has been filed;

(iii) a person who holds a resident hunting license and is familiar with the hunting district where the alleged concentration is occurring;

1 (iv) a representative of a federal land management agency if there are federally owned lands in the  
2 hunting district where the alleged concentration is occurring; and

3 (v) a department big game biologist who is responsible for monitoring big game animals in the hunting  
4 district where the alleged concentration is occurring.

5 (b) (i) The regional committee shall review any written complaint and the results of the investigation  
6 conducted by the department pursuant to [section 3]. Upon consideration of all of the relevant material, the  
7 committee shall decide whether there is substantial evidence that a concentration occurred and whether  
8 mitigation is appropriate and shall present its findings and recommendations to the concerned parties regarding  
9 the validity of the complaint. The committee's decision is without administrative or judicial authority and is not  
10 binding upon any party. The decision and the reasoning and basis for the decision of the committee are not  
11 admissible as evidence in an action subsequently brought in a court of law and are not evidence for any purpose  
12 in a civil action or an action brought under common law.

13 (ii) Any regional committee member may choose not to participate in any case in which, by virtue of the  
14 circumstances, the member feels that presence on the committee would be inappropriate, considering the  
15 purpose of the committee. The regional supervisor shall excuse that member from serving and appoint a similarly  
16 qualified member for consideration of that case.

17 (iii) If after receiving the regional committee's recommendations the complainant decides to pursue further  
18 review, the complaint and the results of the investigation conducted by the department must then be presented  
19 to the commission, and the commission shall consider the complaint in the context of a contested case under Title  
20 2, chapter 4, part 6.

21 (iv) If the commission determines that a concentration of big game animals has occurred, the commission  
22 may order mitigation as provided in [section 4].

23 (v) The director shall provide support, including staff, that is appropriate for each regional committee to  
24 carry out its duties.

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26 **NEW SECTION. Section 8. Admissibility of evidence of concentration of big game animals.** A  
27 finding by the commission that a landowner has created or maintained a concentration of big game animals and  
28 the subsequent failure by the landowner to implement the mitigation proposals imposed by the commission is  
29 rebuttal evidence in a civil action by the state or a private party in district court that the landowner is creating or  
30 maintaining a concentration of big game animals. The proof may be entered as evidence by the state or a private

1 party in a civil action seeking compensation for damage resulting from creating or maintaining a concentration  
2 of big game animals.

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4 **Section 9.** Section 87-1-225, MCA, is amended to read:

5 **"87-1-225. Regulation of wild animals damaging property -- public hunting requirements. (1)**

6 Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection  
7 (3) if ~~he~~ the landowner:

8 (a) allows public hunting during established hunting seasons; ~~or~~

9 (b) does not significantly reduce public hunting through imposed restrictions; or

10 (c) has not unlawfully created or maintained a concentration of big game animals pursuant to [sections  
11 1 through 8] or failed to implement mitigation measures required under [section 4].

12 (2) The department may provide game damage assistance when public hunting on a landowner's  
13 property has been denied because of unique or special circumstances that have rendered public hunting  
14 inappropriate.

15 (3) Within 48 hours after receiving a request or complaint from any landholder or person in possession  
16 and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and  
17 regulations, are doing damage to the property or crops ~~thereon~~ on the property, the department shall investigate  
18 and arrange to study the situation with respect to damage and depredation. The department may then decide to  
19 open a special season on the game or, if the special season method ~~be~~ is not feasible, the department may  
20 destroy the animals causing the damage. The department may authorize and grant the holders of ~~said~~ the  
21 property permission to kill or destroy a specified number of the animals causing the damage. ~~No~~ A wild ferocious  
22 animal damaging property or endangering life ~~shall be~~ is not covered by this section."

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24 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be  
25 codified as an integral part of Title 87, chapter 3, and the provisions of Title 87, chapter 3, apply to [sections 1  
26 through 8].

27 - END -